

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
INCOME TAX APPLICATION No 277 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

RAPICUT CARBIDES LTD.

Appearance:

MR MANISH R BHATT for Petitioner

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 01/09/1999

ORAL JUDGEMENT

The revenue has approached this Court by filing this Application under Section 256 (2) of the Income tax Act for referring the following questions for the opinion of this Court :

- " (1) Whether on the facts and in the
circumstances of the case, the Income tax
Appellate Tribunal was right in law in upholding
the Commissioner of Income tax (Appeal)'s order
deleting the disallowance of Rs. 2,02,549/- made

on account of excess consumption of raw materials?

(2) Whether on the facts and in the circumstances of the case, the Income tax Tribunal was right in law in upholding the Commissioner of Income tax (Appeal)'s order deleting the addition of Rs.51, 526/- made on account of Modvat credit ?

(3) Whether on the facts and in the circumstances of the case, the Income tax Appellate Tribunal was right in law in upholding the Commissioner of Income tax (Appeals)'s order deleting the addition for licence fee of Rs.15,280/- paid to the Registrar of Companies for increase in the Authorised share capital?"

When an application was made under Section 256 (1) of the Act to the Tribunal, the Tribunal rejected it inter alia on the ground that question No.1 cannot be referred to this Court as it was based on appreciation of fact and a finding of fact was recorded by the Tribunal. Question No.2 was concluded by a decision of this Court in CIT vs. Nirma Detergent Private Limited , ITA No.70 of 1997 decided on December 24, 1997. According to the Tribunal, the third question was also covered by a decision of this Court in Alembic Glass Industries vs. CIT, 202 ITR 214.

We have heard Mr.Bhatt for the applicant. It appears that the first and second questions are in the realm of appreciation of evidence and a finding of fact has been arrived at. Again, questions Nos. 2 and 3 have been concluded by decisions of this Court. We are, therefore, of the opinion that no question arises for opinion of this Court. Accordingly, the Application is dismissed. No order as to costs.

parekh